

CHAPTER 6 CONSTRUCTION PROCUREMENT

PART 6.1 COMPETITIVE SEALED BIDDING

6.1.1 RELATED STATUTORY AUTHORITY

1. SC Code § 10-1-180 gives the State Engineer the authority and responsibility to determine the enforcement and interpretation of the building codes and reference standards on state buildings.
2. SC Code § 11-35-1520 requires that contracts amounting greater than \$50,000 be awarded by competitive sealed bidding except as otherwise provided in SC Law Section 11-35-1510.
3. SC Code § 11-35-1810 requires that the responsibility of the bidder shall be determined for each contract let by the State.
4. SC Code § 11-35-1825 permits prequalification of construction bidders for unique construction, or for projects over ten million dollars in value, in accordance with OSE criteria and procedure.
5. SC Code § 11-35-3020 requires that all state construction contracts be awarded by competitive sealed bidding, except as permitted therein.
6. SC Code § 11-35-3020 requires that the agency send all responsive bidders a copy of the bid tabulation within 10 working days following the bid opening.
7. SC Code § 11-35-3020 permits negotiations after unsuccessful competitive sealed bidding within the limitations described by the law.
8. SC Code § 11-35-3030 requires that all competitive sealed bidding for state construction contracts in excess of \$50,000 be provided with bid security.
9. SC Code § 11-35-3030 requires that all construction contracts awarded by competitive sealed bidding valued in excess of \$50,000 be provided with both a performance bond and a labor and material payment bond in the full amount of the contract.
10. SC Code § 11-35-4210 permits the State Engineer to resolve protested construction solicitations and awards.
11. SC Code § 40-11-260 requires general and mechanical contractors to be licensed for projects valued at \$5,000 or more.
12. SC Code § 40-79-29 requires a valid license to engage in a burglar or fire alarm business or activity. Note that SC Code § 40-79-310 and § 40-11-410(5)(d) permits mechanical contractors with an electrical contractor's license to design, install, and service fire alarm systems.
13. SC Regulation 19-445.2050 permits only the information disclosed at the bid opening to be considered as public information under the Freedom of Information Act until the notice of intent to award is issued.

6.1.2 APPLICABILITY

Except as the Procurement Code and this Manual otherwise permit, Agencies must procure all construction contracts exceeding \$50,000 by competitive sealed bidding. For projects of \$50,000 or less, see the small procurement provisions in Chapter 8 of the Manual.

6.1.3 ADVERTISING PROJECTS FOR BIDDING

The competitive sealed bidding phase of a construction project begins with the advertisement of the project in South Carolina Business Opportunities (SCBO). It ends with the signing of the construction contract by both parties and the issuance of the Notice to Proceed SE-390.

The Agency must advertise all construction contracts with a construction budget exceeding \$50,000 in SCBO. The SCBO advertisement is the official Invitation for Construction Bids. The Agency may advertise in other media but errors in advertisements other than SCBO do not constitute a basis for a protest.

An Agency may submit advertisements for construction contracts within their construction procurement certification directly to SCBO using the Invitation for Construction Bid form (SE-310). The Agency must submit advertisements for construction contracts that exceed the agency's construction certification to OSE, using the Invitation Form (SE-310) to OSE for approval. After a satisfactory review of the bid documents, OSE will approve the Invitation and submit it to SCBO for publication.

6.1.4 PRE-BID CONFERENCES AND SITE VISITS

Agencies must advertise pre-bid conferences and site visits in SCBO. An Agency desiring to make potential bidders' attendance at a pre-bid conference mandatory in order to bid the project must make a written determination that mandatory attendance is justified by the unique nature of the project and that a mandatory conference will not unduly restrict competition. Non-Mandatory pre-bid conferences and site visits do not require attendance by prime bidders in order for them to bid a project.

A. WHO SHOULD ATTEND

The Agency, the Agency's designer, and the OSE representative should attend all pre-bid conferences for projects exceeding the Agency's construction procurement certification. On all other projects, the Agency may request an OSE representative to attend.

B. CONDUCTING THE CONFERENCE

The Agency or its designer should conduct the pre-bid conference. Table 6.5-1 at the end of this chapter contains a list of suggested pre-bid discussion items. The Agency and its designer should customize the actual list of discussion items for the particular project.

The Agency or its designer should discuss the Bid Documents (project manual and drawings) at the pre-bid conference in sufficient detail to ensure that all prospective bidders understand the scope of the project.

C. WHAT TO DO WHEN NO ONE ATTENDS A MANDATORY PRE-BID CONFERENCE

If no prospective bidder appears at a first mandatory pre-bid conference, the Agency may cancel the Invitation for Bid or schedule a new pre-bid conference that is either mandatory or non-mandatory. If the Agency chooses to schedule a new pre-bid conference, it must advertise the conference in SCBO. The Agency should schedule the conference to occur no less than 14 days prior to bid opening. This will allow the Agency to clarify by addendum any issues bidders raise at the pre-bid conference. This may require the Agency to advertise a new bid opening date and time in SCBO at the same time it advertises the new pre-bid conference.

6.1.5.1 ADDENDA

The Agency must issue an addendum for modifications, corrections, or clarifications to the bid documents including, but not limited to, the following:

1. Providing a list all firms represented at a mandatory pre-bid conference;
2. Providing responses to questions received from potential bidders during the bidding period;
3. Providing a list all substitutions approved by the Agency or design professional;
4. Providing clarification to items in the bid documents prior to the date for the receipt of bids; and
5. A Change in the date for the receipt of bids;
6. Rescheduling a bid opening; or
7. Canceling the invitation for bids.

The Agency should not normally issue an addendum less than the five days prior to the date for receipt of bids. However, the Agency may issue an addendum postponing the date for receipt of bids or withdrawing the invitation for bids at any time prior to the time set for bid opening.

The Agency must send addenda to all plan holders of record and all who attend a pre-bid conference. The bid form has a location for bidders to acknowledge receipt of addenda.

6.1.5.2 MULTIPLE BASE BIDS

See Chapter 5.2 Part 5.2.6 for procedures for handling multiple base bids in the bid documents.

6.1.6 BID POSTPONEMENT

The Agency may postpone a bid opening for any of the following reasons:

1. Causes beyond the control of the bidders (e.g. flood, fire, accident, weather conditions);
2. Emergency or unanticipated events that interrupt normal government operations;
3. Revision of specifications and/or drawings; or
4. When postponement is clearly in the best interest of the State.

The Agency may postpone bids by issuing an addendum any time prior to the time set for the bid opening. If there is not enough time to issue a written addendum prior to the time set for the bid opening, the Agency must notify bidders by telephone or other appropriate means followed with a written copy of the addendum. If possible, the Agency should verify with bidders their receipt of the notice of postponement. When time permits, the Agency must advertise notification of the postponement of bids in SCBO.

The addendum should notify the bidders of the postponement of the original bid date and establish a new bid date. The new bid date should be at least five days after the date the Agency issued the addendum postponing the original bid date.

6.1.7 BID CANCELLATION

The Agency may cancel the Invitation for Bids by written addendum at any time prior to the time set for the bid opening. The Agency may issue the addendum as late as the time set for the opening of bids. The Agency should send the addendum to all plan holders of record as soon as the agency determines that it will cancel the bid opening. When time permits, the Agency must advertise the notification of the cancellation of bids in SCBO.

6.1.8 BID OPENINGS

A. RECEIPT OF BIDS PRIOR TO BID OPENING

The Agency must keep all Bids (including modifications) it receives before the time of opening secure and unopened. However, the Agency's Procurement Officer or his/her designee may open unidentified bids solely for the purpose of identification.

If a person opens a sealed bid by mistake, they should immediately write their signature and position on the envelope and deliver it to the Agency's procurement officer. This official must reseal the envelope and write on an explanation of the opening, the date and time opened, the invitation for bids' number and his/her signature.

B. OPENING BIDS: Procurement Code Requires Bid openings to be open to the public.

1. TIME FOR CONDUCTING BID OPENING

The agency must open bids at the time set forth in the Invitation for Bids as the deadline for the receipt of bids. In the event of a force majeure preventing the Agency from receiving bids, the Agency may postpone the bid opening until the next business day at the time originally specified.

2. BIDS RECEIVED AFTER DEADLINE FOR RECEIPT

The Agency must receive bids at the address indicated in paragraph 9.2 of the Instructions to Bidders (00201-OSE) before the time for bid opening. If the indicated address is served by a central mailroom, delivery of bids sent by mail or other special delivery service (UPS, FED-EX, etc.) to that mailroom is sufficient. The Agency must reject bids not delivered at the indicated location or the Agency mailroom before the time of the bid opening. The Agency should return any bid it rejects for being late to the bidder unopened.

If after the bid opening, the Agency discovers a bid delivered at the location for delivery or the mailroom before the time for bid opening, the Agency must open and consider the bid. In such event, the Agency must document the circumstances in writing and place a copy in its procurement file.

3. CONDUCTING THE BID OPENING

At the time set for the bid opening, as indicated on the Invitation for Bids (SE-310), or as modified by addendum, the procurement officer should declare that the time for receipt of bids has arrived and that he/she will no longer accept bids. The Agency must reject all bids received after this time and return them to the bidders unopened.

After declaring the arrival of the time for receipt of bids, the procurement officer should publicly give his/her name and the names of the witnesses and record this information on the bid tabulation sheet. The procurement officer should then open timely bids individually and read them in the presence of one or more witnesses. When only one bidder submits a timely bid, the procurement officer should open the bid and read it aloud. The procurement officer should read aloud and recorded on a bid tabulation sheet the following information from each bid:

1. The Name of the bidder;
2. Compliance with bid security requirements;
3. Acknowledgment of all addenda;
4. Base Bid amount;
5. If requested in the invitation for bids, Alternate bid amounts;
6. Names of all subcontractors listed for the Base Bid; and
7. If requested in the invitation for bids, names of all subcontractors listed for the Bid Alternates

NOTES:

1. See Part 6.1.9 for additional information concerning bid responsiveness.
2. If an opened bid is non-responsive, the Agency must note this condition on the bid tabulation sheet.
3. **MULTIPLE BIDS RECEIVED IN SAME ENVELOPE:** when the Agency receives multiple bids within the same envelope, it should accept only the lowest responsive bid.

C. CONCLUSION OF BID OPENING

After reading bids, the Agency should thank the bidders for submitting bids and make the following announcements:

1. The date and location of the posting of the Notice of Intent to Award (SE-370) as set forth in the Invitation for Bids;
2. That after posting, the Agency will mail a copy of the Notice of Intent to Award to all bidders; and
3. That the Agency will mail a copy of the bid tabulation to all bidders within 10 working days of the bid opening.

D. POST BID OPENING STEPS

After the bid opening but before posting of the Notice of Intent to Award, the Agency needs to verify the following:

1. That the bid security of each bidder complies with the requirements of paragraph 4.2 of the Instruction to Bidders (see also paragraph 6.8(C) of this Manual);

NOTE: To check the authenticity of an electronic bid bond, go to the Surety2000 web site (www.surety2000.com) to register (as Owner/Obligee) and follow the links to match the electronic bid bond number provided on page BF-4 of the SE-330. Check the listed surety company against the OSE web site to determine compliance with paragraph 4.2 of the Instruction to Bidders.

2. That the apparent low bidder and all listed subcontractors have the proper South Carolina Contractor's licenses to execute a contract for the project;
3. That the lowest responsive bidder meets the State standards of responsibility as enumerated in Article 6 of the Instruction to Bidders. Refer to Part 6.1.16; and
4. That the lowest responsive bidder has met the other requirements specific to the project.

6.1.9 DETERMINATION OF BIDDERS' RESPONSIVENESS

A. BID IRREGULARITIES THAT ARE CAUSE FOR REJECTION

Reasons for which the Agency must reject bids as non-responsive include but are not limited to the following:

1. Bidder's failure to attend a mandatory pre-bid conference or site visit;
2. Bidder's failure to deliver the bid on time;
3. Bidder's failure to provide the required bid security;
4. Bidder's failure to include a properly executed power of attorney with its bid bond;
5. Bidder's failure to bid an alternate;
6. Bidder's failure to list subcontractors as required by law;
7. Bidder's qualification of his/her bid by modifying the bid form or listing exceptions to the requirements of the solicitation;
8. Bidder's delivery of his/her bid directly to the Agency or its representative via facsimile machine; or
9. Bidder's failure to include in the bid envelope all items required by the bid documents.

B. MINOR INFORMALITIES ARE NOT CAUSE FOR REJECTION

The Agency should not reject bids for minor informalities (irregularities) in the bid. In such cases, the Agency may ask the bidder to correct the defect or where it is advantageous to the State, the Agency may wave the requirement. The Agency's request to correct or the determination to waive must be in writing. If the Agency asks the bidder for a correction of a minor informality and bidder fails to do so, the Agency may reject the bid as non-responsive.

Minor informalities in the bid include, but are not limited to, the following:

1. Bidder's failure to write "Sealed Bid Enclosed" on the outside of the mailing envelope;
2. Bidder's failure to seal the bid envelope;
3. Bidder's listing of a modification to the bid on the outside of the bid envelope (however, such modifications will not be considered);
4. Bidder's failure to list any information on the envelope other than that which may be required by law;
5. Bidder providing a fax copy or other reproduction of any or all bidding documents in the bid envelope;
6. Bidder's failure to indicate for an alternate "ADD" or "DEDUCT", but only when the adjustment to the Base Bid is obvious;
7. Bidder's failure to provide a unit price when requested on the bid form but only if the bid amount is not based on unit prices;
8. Bidder providing additional listings of "Subcontractor Specialty" beyond those listed on the bid form;
9. Bidder's failure to sign the bid, provided it is accompanied by a properly prepared bid security, or other information, as required by 00201-OSE;
10. Bidder providing a reproduction of a signature on any or all bidding documents;
11. Corporate Bidder's failure to include its seal on the bid;
12. Bidder's failure to sign the bid bond but only if the bond has been properly executed and signed by the bonding company or agent; and
13. Immaterial variations from the exact requirements.

See SC Code § 11-35-1520(13).

C. FAILURE TO PROVIDE REQUIRED BID SECURITY

A bid that does not include the bid security required by the Invitation for Bids is non-responsive and unless it is eligible for correction as set forth below, the Agency must reject it. This means that each bid in excess of \$50,000 must include in the bid envelope either a certified cashier's check or a bid bond in an amount of five percent of the Base Bid or greater. Personal checks or letters of credit are not acceptable.

Copied or faxed bid bonds and Powers of Attorney are acceptable, but must be included in the bid envelope.

Bid security in the form of a cashier's check must name the Agency as the payee. Bid security in the form of a bid bond must name the Agency as the obligee.

If a bidder submits a bid bond, the surety must write the bond on OSE Bid Bond Form SE-335 in the form of a paper copy or electronic bid bond. See Paragraph 6.7(D) for instructions on looking up an electronic bid bond to confirm its form. Each paper bid bond must be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety.

The surety on a bid bond must be licensed to conduct business in the State of South Carolina. Unless otherwise noted in the bid documents, the surety must have an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability". In addition, the surety must have a minimum "Best Financial Strength Category" of "Class V", and in no case less than five (5) times the contract amount. The Agency may find Best ratings at the Web address:

<http://www3.ambest.com/ratings/default.asp>

The Agency should give a bidder submitting a bid security that is at least 80% of the required amount one working day from the bid opening to cure the deficiency. Likewise, the Agency should give a bidder submitting a bid bond written by a surety not meeting the required surety rating and financial strength one working day from the bid opening to cure the deficiency. A working day closes at the time of day the Agency's facility that receives the bids normally closes.

D. FAILURE TO ACKNOWLEDGE ADDENDA

Except for minor informalities as provided in SC Code § 11-35-1520(13)(d), the Agency must reject a bid where the bidder failed to acknowledge all addenda on the bid. Exceptions are:

1. the bid received indicates in some way that the bidder received the amendment, such as where the amendment added another item to the solicitation and the bidder submitted a bid on it, if the bidder states under oath that it received the amendment before bidding and that the bidder will stand by its bid price; or
2. The amendment has no effect on price or quantity or merely a trivial or negligible effect on quality or delivery, and is not prejudicial to bidders, such as an amendment correcting a typographical mistake in the name of the governmental body.

6.1.10 REQUIRED BID TABULATION

The Agency must prepare a final Bid Tabulation consisting of the following information:

1. Project name and number;
2. Agency name;
3. Names of the persons opening bids and the witnesses, each of whom must initial the Bid Tabulation sheets;
4. List of all contractors submitting bids;
5. Acknowledgment of addenda;
6. Inclusion of proper bid security;
7. Base Bid amount;
8. Alternate Bid amounts, if any; and
9. Listing of subcontractors for Base Bid and Alternates; and
10. If the Agency declared any bid to be non-responsive, the reasons for that declaration.

Within 10 working days of the bid opening, the Agency must send OSE and each responsive bidder a copy of the final Bid Tabulation.

6.1.11 EXTENDING BID ACCEPTANCE PERIOD

If the Agency desires to extend the bid acceptance period beyond the time given in the Bid Form (SE 330), then before the expiration of that period, it should obtain a written extension of bid prices(s) from all bidders. A bidder does not have to agree to hold its bid price beyond the bid acceptance period. However, the Agency should consider for award only the bids of those bidders who provide a written extension of their bids before the expiration of the original bid acceptance period. If the Agency fails to obtain a written extension of at least one bid before the expiration of the acceptance period, it will have to re-bid the project before it can award a contract.

6.1.12 BID WITHDRAWAL, MODIFICATION, OR CORRECTION

A. WITHDRAWAL OR MODIFICATION OF BIDS BEFORE TIME FOR OPENING BIDS

At any time before the time of the bid opening, a bidder may modify or withdraw his/her bid. A bidder's modification to his/her bid must be made on the bid form prior to the time of bid opening. The Agency may not consider a modification to a bid on the outside of the bid envelope.

B. WITHDRAWAL OR CORRECTION OF BIDS AFTER TIME FOR OPENING BIDS

Except in limited circumstances, Bidders may not withdraw or modify their bids in the period after the time of the bid opening but before the time for bid acceptance. The Agency should require a bidder requesting permission to withdraw or correct his/her bid during this period to submit the request in writing.

1. CORRECTION

The Agency may only allow correction of a bid when the bidder has made a clerical or mathematical error that is, in the judgment of the Agency's procurement officer, clearly evident from examining the bid document (i.e.; extension of unit prices or errors in addition).

2. WITHDRAWAL

A bidder's request to withdraw a bid due to mistake must document the fact that the bidder's mistake is clearly an error that will cause him substantial loss. If the Agency allows a bidder to withdraw his bid because of the bidder's mistake, the Agency must return the bid security to the bidder. In the case of an electronic bid bond, the Agency does not need to take any action to return the security.

3. RETENTION OF BID SECURITY

If a bidder withdraws his/her bid without the Agency's approval or refuses to enter into a contract, then the Agency must retain his/her bid security. If the security is a bid bond, the Agency should make a claim on the bond in accordance with the bonds provisions.

6.1.13 REJECTION OF ALL BIDS

Unless there is a compelling reason to reject one or more bids, the Agency must award to the lowest responsible and responsive bidder. The Agency may cancel the invitations for bids after opening, but prior to award, if the procurement officer determines in writing that:

1. Inadequate or ambiguous specifications were cited in the invitation;
2. Specifications have been revised;
3. The supplies or services being procured are no longer required;
4. The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
5. Bids received indicate that a less expensive article differing from that on which the bids were invited can satisfy the needs of the State;
6. All otherwise acceptable bids received are at unreasonable prices;
7. The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
8. For other reasons, cancellation is clearly in the best interest of the State.

The Agency must state the reasons for canceling an invitation for bids in its determination. The Agency must post a copy of the determination on the date and at the location given at the bid opening for the posting of the Notice of Intent to Award (SE 370). The Agency must also mail a copy to all bidders, along with their bid security, and to OSE.

6.1.14 RE-BIDDING PROJECTS

If the Agency rejects all bids, it may re-bid the project provided it significantly modifies the scope of the construction documents or delays re-bidding by at least three months. The Agency must advertise the project for re-bid just as it did for bid.

When re-bidding a project, the Agency must add the word "RE-BID" above the title 'Invitation for Construction Bids' on form SE 310. The Agency must include any change in the scope of work in the project description in the Invitation. For contracts exceeding Agency construction certification, the Agency must submit the new Invitation (SE-310) to OSE for approval and advertisement in SCBO.

6.1.15 TIE BIDS

If two or more bidders are tied in price, while otherwise meeting all of the required conditions, the Agency must award the project as follows:

1. When the tie is between a South Carolina firm and an out-of-state firm, award the project to the South Carolina firm;
2. When the tie is between South Carolina firms, award the project to the South Carolina firm located in the same taxing jurisdiction as the project's location; and
3. When the tie is between South Carolina firms in the same taxing jurisdiction as the project's location, award the project by the flip of a coin in the offices of the State Engineer or the head of the purchasing Agency or either officer's designee, witnessed by all interested parties.

6.1.16 DETERMINATION OF BIDDER'S RESPONSIBILITY

Before it posts a Notice of Intent to Award (SE-370), the Agency must satisfy itself that the prospective contractor meets the State's Standards of Responsibility.

A. CRITERIA FOR DETERMINING RESPONSIBILITY

Criteria the Agency should use in determining whether the contractor meets the State's Standards of Responsibility include whether the contractor has:

1. The appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to meet all contractual requirements;
2. A satisfactory record of performance;
3. A satisfactory record of integrity;
4. The necessary legal qualifications to contract with the State (includes being properly licensed); and
5. Supplied all necessary information in connection with the inquiry concerning responsibility.

B. VERIFY PROPER CONTRACTOR LICENSING AND LICENSE LIMITATIONS:

Prior to posting the Notice of Award, the Agency must verify that the prospective contractor and his/her listed subcontractors have the proper contractor's license and license limitations. The Agency must determine that each required license was effective at the time of bidding. If the Agency determines that a prospective contractor or one of his/her listed subcontractors does not have the proper license and license limitations, the Agency must declare the prospective contractor is non-responsible. The Agency should also notify the S.C. Contractors' Licensing Board of the contractor or subcontractor offering to perform work without a proper license. The Agency may contact Contractors' Licensing Board at:

Department of Labor, Licensing and Regulation (LLR)
Division of Professional and Occupational Licensing
Contractors' Licensing Board
Kingstree Building
110 Centerview Drive
Columbia, South Carolina 29210
Telephone: (803) 896-4686 FAX: (803) 896-4364

C. UNCERTAINTY CONCERNING A PROSPECTIVE CONTRACTOR'S RESPONSIBILITY

If an Agency is uncertain about a prospective contractor's responsibility, it should require the prospective contractor to complete a Contractor's Responsibility Questionnaire and provide any other information the Agency may need to support its determination. The Agency should complete the project/Agency information on the Questionnaire and send it to the contractor by certified mail with return receipt requested. The questionnaire may be in the form of the AIA Document A305 – 1986 Contractors Qualification Statement; ConsensusDOCS 221: Contractor's Statement of Qualifications; SE-350; the questionnaire in the Prequalification Handbook, or any other document of the Agency's choosing.

Upon receipt of the Questionnaire and other requested information from the prospective contractor, the Agency should verify the information contained therein together with any other information available to the Agency, to determine if the prospective contractor is deficient in one or more way.

If a prospective contractor is determined to be responsible, then the Agency may proceed with the posting of the Notice of Intent to Award.

Right of Nondisclosure: Except as otherwise provided by SC law, the Agency must not disclose bidder furnished information outside of the offices of the Board, the Office of the Attorney General, the OSE, or the Agency without prior written consent by the bidder.

D. ACTIONS UPON DETERMINATION OF NONRESPONSIBILITY

1. WRITTEN DETERMINATION

If the Agency determines a prospective contractor, to whom it would have otherwise awarded a contract, to be non-responsible, it should prepare a written determination to that effect. The written determination must:

1. Be prepared by the Agency's procurement officer;
2. Set forth the basis of the finding of non-responsibility; and
3. Be made part of the agency's procurement file.

The Agency should promptly send a copy of its determination to the non-responsible bidder and to OSE.

2. AWARD TO NEXT LOWEST BIDDER

The Agency may award the contract to the next lowest responsive and responsible bidder, if the bid is within the Agency's construction budget.

6.1.17 PERMITTED NEGOTIATIONS AFTER UNSUCCESSFUL BIDDING

If bids exceed available funds, the Agency may negotiate with the lowest responsive and responsible bidder when it determines in writing that:

1. Circumstances will not permit the delay required to re-solicit competitive sealed bids; and
2. The low bidder's Base Bid, less any deductive alternates, does not exceed available funds by more than ten percent of the construction budget established for that portion of the work.

In negotiations, the Agency may change the scope of the work to reduce the cost to be within the established construction budget. However, the Agency may not reduce the cost below the established construction budget by more than ten percent, without a written request by the Agency and the written approval of the State Engineer. The Agency's request must be in the best interest of the State.

The Agency may not accept or use substitution of listed sub-contractors as a means to negotiate a reduction in the contract amount.

Upon completion of successful negotiations with the contractor, the Agency must submit the following to the OSE along with a Request for Authority to Execute a Construction Contract (SE-380):

1. The written determination declaring the reason(s) for negotiation; and
2. A description of the changes made to the scope of the project.

6.1.18 INSUFFICIENT FUNDS AUTHORIZED BY FORM A-1

The Agency may not award a construction contract for a PIP project unless the most recently approved Form A-1 authorizes unencumbered funds sufficient to cover the full amount of the contract plus construction contingencies.

6.1.19 NOTICE OF INTENT TO AWARD

Once the Agency determines that the lowest responsive and responsible bid is within available funds, it must, unless there is a compelling reason to cancel the project, post a Notice of Intent to Award (SE-370) to the bidder submitting that bid. Even if the Agency received only one bid, it must post this Notice. The Agency must post the Notice at the time and in the location announced at the bid opening. The Agency must also promptly mail a copy of the notice with the bid tabulation to each responsive bidder.

If an Agency is unable to confirm intent to award on the posting date announced at the bid opening, it must post a notice on that date at the specified location stating the new date the Agency will post the Notice (SE-370).

6.1.20 CONTRACT EXECUTION WAITING PERIOD

Unless the Agency only received one bid, it must wait eleven days after posting the Notice of Intent to Award before it may enter into a contract lowest responsive and responsible bidder. During this time, any bidder who disagrees with the Agency's decision as to who is the lowest responsive and responsible bidder may protest the contract award. If the State Engineer receives such a protest in writing during this period, the Agency may not award a contract until the matter is resolved. For more details, see the chapter on protests and disputes. If the State Engineer does not receive any protests, the Agency may enter into the contract on the eleventh day after posting the Notice of Intent to Award.

6.1.21 OSE REVIEW AND APPROVAL OF CONSTRUCTION CONTRACTS

A. PROJECTS AT OR UNDER CONSTRUCTION PROCUREMENT CERTIFICATION

OSE does not review and approve construction contracts within an agency's construction certification if the Agency uses OSE approved contract documents and that the Agency procures the construction by competitive sealed bids. These contracts are still subject to Consolidated Procurement Code and the Agency must award them in accordance with the procedures set forth throughout this chapter.

B. PROJECT ABOVE CONSTRUCTION PROCUREMENT CERTIFICATION

If the proposed contract value exceeds the Agency's construction procurement certification, it must submit the proposed contract to OSE for review and approval. The Agency should make this submittal using Form SE-380, Request for Authority to Execute a Construction Contract. An Agency may not execute a contract exceeding their construction procurement certification until the State Engineer authorizes contract execution.

The Agency's awarding authority must sign and date the Form SE-380 before submission to OSE. The Agency must submit the following documentation along with the original and one copy of Form SE-380 to OSE:

1. The low bidder's Bid SE-330;
2. The low bidder's bid Security with power of attorney;
3. The final bid tabulation;
4. The Notice of Intent to Award SE-370;
5. The proposed construction contract, signed by the prospective contractor only;

6. The performance bond with power of attorney;
7. The labor and material payment bond with power of attorney;
8. Bid extensions if applicable;
9. The Inspection and Materials Testing Order Form SE-955;
10. Copies of locally required permits; and
11. The Building Permit (Form SE-385), with attachments (four completed copies).

The OSE will review the submitted information and, if approved, will return a copy of the Request and three signed copies of the building permit to the Agency.

For additional information concerning projects bid within the Agency construction certification, but with the low bid exceeding the Agency construction certification, see Chapter 3.

6.1.22 NOTICE TO PROCEED

The Agency must issue a Notice to Proceed (Form SE-390) to the contractor on all contract awards whether within or over the Agency construction certification. The Agency must include the date of commencement of work in the Notice to Proceed. The Agency must use the date of commencement established in the Notice to Proceed for determining the date(s) of Substantial and Final Completion and the application of any Early Completion Award or Liquidated Damages.

1. The Date of Commencement should be set at least 7 days after the date of the Notice to Proceed to allow the Contractor to mobilize its work forces.
2. The Notice to Proceed and contract requires the contractor to commence physical work on the project within 14 days of the Date of Commencement. The contractor's failure to commence physical work within 14 day entitles the Agency is entitled to consider the contractor in breach of its contract obligations.

When the contract is within the Agency construction certification, The Agency may send the Notice to Proceed to the contractor after the construction contract is executed. Issuing the Notice to Proceed to the contractor prior to executing the contract constitutes a de facto contract execution and may represent an unauthorized procurement or expose the Agency to damages if the contract is terminated.

When the contract is over the Agency's construction certification, The Agency may send the Notice to Proceed to the contractor only after OSE has approved the Agencies Request for Authority to Execute a Contract (SE-380) and the construction contract is executed. The Agency must send a copy of the Notice to Proceed to the OSE on the same day it mails the Notice to the contractor.

6.1.23 RETURN OF BID SECURITY AND DISPOSITION OF BIDS

Except for the three lowest responsive and responsible bidders, the Agency should return the bid securities of all other bidders within 10 days after the date of the bid opening. Upon execution of a contract, the Agency should, return the bid securities of the three lowest bidders.

The Agency must retain all bids until it has a fully executed contract. The Agency must retain the bid of the successful bidder in its procurement file.

6.1.24 PREQUALIFICATION OF CONSTRUCTION BIDDERS AND SUB-BIDDERS

An Agency may pre-qualify bidders and sub-bidders only with OSE approval and only for projects where OSE determines the construction is unique in nature, or in excess of ten million dollars in value. Moreover, OSE must supervise all prequalification projects. Refer to Appendix I for procedures and criteria for prequalification of construction bidders.

6.1.25 EXCEPTIONS TO COMPETITIVE SEALED BIDDING

A. Agencies must procure construction-related professional services in accordance with Chapter 4.

- B. Agencies may procure construction of \$50,000 or less as small purchases in accordance with Chapter 8.
- C. Agencies must procure sole source construction in accordance with Chapter 8.
- D. Agencies must procure emergency construction in accordance with Chapter 8.
- E. Agencies must procure construction management/constructor (at-risk) in accordance with Chapter 6 Part 6.2
- F. Agencies must procure Design-Builder Services in accordance with Chapter 6 Part 6.2.

Table 6.5-1. PRE-BID CONFERENCE DISCUSSION ITEMS	
Discussion Items	
<ol style="list-style-type: none"> 1. Only the written word as contained in the Bid Documents, including any addenda that may be issued, shall be valid. 2. It is the bidders' responsibility to read and review all of the Bid Documents, including addenda. 3. Statements made by the A/E, agency and/or the OSE representative are for the sole purpose of calling the bidders' attention to items of importance in the Bid Documents. 4. All questions or requests for clarification must be submitted in writing. All responses will be made in the form of addenda to the bid documents. 	
<ol style="list-style-type: none"> 1. <i>(When required)</i> Each bid shall have bid security of not less than 5% of the sum of the base bid. 2. <i>(When required)</i> The successful bidder shall provide a Performance Bond and a Labor and Material Payment Bond, each in the full amount of the contract price. Refer to paragraph 6.19. 3. Bidders and all subcontractors shall be licensed in accordance with the requirements of the Contractors' Licensing Board. 4. Review the time, date and location of the bid opening. 5. Bidders shall be responsible for having their bid at the designated place for receiving bids no later than the time set for the bid opening. Once the bidding has been declared closed, all late bids, including bids improperly delivered, shall be rejected as being nonresponsive. 	
<ol style="list-style-type: none"> 1. A701, Paragraph 3.3, Substitutions: <ol style="list-style-type: none"> a. 00201-OSE, Subparagraph 3.3.1: Materials and products listed in the Bid Documents establish a standard of required function, dimension, appearance and quality to be met by a proposed substitution. b. 00201-OSE, Subparagraph 3.3.1: Reference in the Bid Documents to the words 'or equal' and 'or approved equal' shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition. c. A701, Subparagraph 3.3.2: Requests for substitutions must be submitted to the A/E at least 10 days prior to the bid date. Proof of equality of substitutions is the responsibility of the proposer. The A/E's decision to approve or disapprove of the requested substitutions shall be final. d. A701, Subparagraph 3.3.3: The A/E shall include in an addendum the approved substitutions. Substitution requests not approved by the A/E may be listed in an addendum at the A/E's option. 2. A701, Paragraph 3.4, Addenda: <ol style="list-style-type: none"> a. 00201-OSE, Subparagraph 3.4.3: No addenda will be issued later than the fifth calendar day prior to the date for receipt of bids, except addenda postponing the date of receipt of bids or withdrawing the invitation for bids (i.e., projects being bid on a Tuesday require that all addenda be issued no later than midnight of the prior Thursday). b. A701, Subparagraph 3.4.4: It is the bidder's responsibility to determine, prior to submitting a bid, that all addenda issued have been received. <p>NOTE: If the pre-bid is mandatory, the bidders should verify that their firm's name has been included in an addendum.</p> 3. 00210-OSE, Subparagraph 4.1.1: Bidder shall not qualify his bid. 4. 00201-OSE, Subparagraph 4.3.3.2: : Bids sent by mail or other special delivery service (UPS, FED-EX, etc.) should be labeled "Sealed Bid Enclosed" and shall be received at the address indicated prior to the time of the bid opening. Bids not received prior to the time of the bid opening shall be rejected as being nonresponsive. 5. 00201-OSE, Subparagraph 5.3.2: List of reasons for which bids will be rejected. Bidders should use this as a check list prior to submitting bid. 6. 00201-OSE, Subparagraph 5.3.3: List of reasons for which bids will not be rejected. 	
<ol style="list-style-type: none"> 1. Page BF-1: <ol style="list-style-type: none"> a. Refer to item 2. Bidders shall indicate the form of the bid security. 	

Table 6.5-1. PRE-BID CONFERENCE DISCUSSION ITEMS

Discussion Items
<ul style="list-style-type: none"> b. Refer to item 4. Bidders shall acknowledge all addenda. c. Refer to item 5. By submitting a bid, Bidders agree that the Base Bid price and the Bid Alternate(s) price(s) shall not be revoked or withdrawn for the number of calendar days indicated. d. Refer to item 6.1. Base Bid shall be shown in figures only.
<p>2. Page BF-1A (<i>when included</i>)</p> <ul style="list-style-type: none"> a. Refer to item 6.2. Bidders shall strike through "ADD" or "DEDUCT" so as to clearly indicate the price adjustment for each Alternate. b. Refer to item 6.3. The Bidder should furnish requested unit prices. The agency reserves the right to include or not to include the unit prices in the contract and to negotiate unit prices with the Bidder. Unit prices have no bearing on the contract award (unless the bid is a unit price bid) and need not be read at the bid opening.
<p>3. Page BF-2</p> <ul style="list-style-type: none"> a. Refer to item 1. A SUBCONTRACTOR is an entity who performs work at the jobsite. Material suppliers, manufacturer's and fabricators are not subcontractors unless they also perform work at the jobsite. b. Refer to item 2. Bidders shall list the name of the subcontractor(s) for each subcontractor specialty identified. Bidders should not add additional subcontractor specialties. c. Refer to item 3. If a Bidder intends to perform any portion of the work for a listed subcontractor specialty with its own employees, and if the Bidder is qualified to perform the work, the Bidder shall list their company name in the appropriate place as the subcontractor. d. Refer to item 4. Failure by the Bidder to list subcontractors shall render the Bid nonresponsive. e. When a Bidder intends to use multiple subcontractors for a specific subcontractor specialty, all of the subcontractors should be listed on the same line as the specialty, separated by the word "and". <u>Do not</u> use the word "or" to separate subcontractor names for the same specialty. f. Qualified Bidders intending to perform work along with a subcontractor for a specific subcontractor specialty, shall list their company name and the subcontractor(s) on the same line as the specialty, separated by the word "and". g. <u>Do not</u> use the word "or" to separate subcontractors' names from the prime bidder's name. h. The method of listing subcontractors for Alternates shall be the same as for the Base Bid. i. Subcontractors listed for Alternates may be used for all of the Alternates and the Base Bid work, if the Alternates are accepted. j. A subcontractor listed for a Base Bid specialty may not be used for listed Alternate work unless the Base Bid subcontractor is listed for the Alternate.
<p>Page BF-3:</p> <ul style="list-style-type: none"> a. Time of Contract Performance <ul style="list-style-type: none"> (1) Refer to item 1. Indicate that the DATE OF COMMENCEMENT shall be established in Form SE-390. (2) Refer to items 2 and 3. Review the number of calendar days allowed for construction to reach Substantial Completion and Final Completion. b. Liquidated Damages and Early Completion <ul style="list-style-type: none"> (1) Refer to item 1 and 2. Review the liquidated damages amounts to be applied for failure to reach both Substantial Completion and Final Completion within the contract time limits. (2) Refer to item 3. When applicable, review any bonus to be paid if the contractor achieves early Substantial Completion in accordance with the contract documents. c. Agreements <ul style="list-style-type: none"> (3) Refer to item 1. An incomplete bid, or information not requested that is written on or attached to the Bid Form, could be considered a qualification of the Bid and may be cause for rejection of the Bid. (4) Refer to item 2. Failure of the Bidder to indicate a price for a Bid Alternate shall render the Bid

Table 6.5-1. PRE-BID CONFERENCE DISCUSSION ITEMS	
Discussion Items	
<p>non-responsive. Review the directions for bidding a Bid Alternate.</p> <p>(5) Refer to item 3. Bid Alternates may be accepted by the Agency in any combination or order at the sole discretion of the Agency.</p> <p>(6) Refer to item 5. Failure of the Bidder to provide name(s) for any listed SUBCONTRACTOR SPECIALTY shall render the Bid non-responsive.</p>	
Page BF-4	
<p>a. Refer to item 7. To support the Agency's evaluation of the Bidder's responsibility, the agency may request the prospective contractor to furnish a completed OSE form SE-350.</p> <p>b. Refer to item 8. By signing the Bid, the Bidder certifies that it will provide a 'Drug-Free Workplace' as required by SC law.</p> <p>c. Refer to item 9. The project may be canceled for the convenience of the State at any time prior to the issuance of the Notice to Proceed.</p> <p>d. If an electronic Bid Bond is to be provided, the bidder shall indicate the electronic bid bond number and provide the proper signature and title in the spaces provided.</p> <p>e. Provide all of the requested information at the bottom of page BF-4.</p>	
<p>1. 00811-OSE, Subparagraph 3.7.1: Requirements for general contractors to obtain business and other licenses, but not building permits, and the requirements for the contractor to obtain inspection services.</p> <p>2. Review typical and special inspection requirements for the project. Include requirements for the contractor to notify the appropriate inspecting entity when the construction is ready for a particular inspection.</p> <p>3. A201 & Supp. Cond, Article 11, Insurance and Bonds:</p> <p>a. Bidders should verify their ability to comply with all insurance and bonding requirements of the project prior to submittal of their bid.</p> <p>b. Supp. Cond, Subparagraph 11.1.5: Contractor's aggregate limits of Liability Insurance shall apply in total to this contract only. This requirement shall be identified on the insurance certificate or by an attached policy amendment.</p> <p>4. A201, Paragraph 11.4, Property Insurance: Contractor is to provide Builders Risk Policy to cover interest of all parties.</p>	
<p>1. It is the intent of the agency to award a Contract for the lowest responsive bid submitted by a responsible bidder.</p> <p>2. The procedure selected for awarding based on use of alternates in solicitation. See Chapter 6 of Manual.</p>	

Table 6.5-1. PRE-BID CONFERENCE DISCUSSION ITEMS

Discussion Items
<ol style="list-style-type: none">1. Remind all attendees to sign the sign-in sheet, if required, and provide all other requested information on the sign-in sheet before leaving the pre-bid.2. Emphasize the following:<ol style="list-style-type: none">a. Late bids shall be rejected as nonresponsive.b. Bids without proper bid security, when required, shall be rejected as nonresponsive.c. Bid Bonds, if submitted, must be written on SE-335 without exception. A valid electronic bid bond is considered to be on the proper form.d. Qualified bids shall be rejected as nonresponsive.e. Bid <u>ALL</u> alternates included on the bid form provided.f. List <u>ALL</u> subcontractors required to be listed on the bid form.g. Successful bidder will be required to provide Builders Risk Insurance covering the interest of all parties.3. Open the pre-bid meeting for questions by bidders.4. Questions after the pre-bid conference and during the bidding stage concerning OSE front-end documents should be directed to the A/E who will, when required, discuss with the OSE.<ol style="list-style-type: none">a. The A/E will, when necessary, provide answers to questions and other clarifying information to bidders by addendum.b. All lines of communication during the bidding stage should be through the A/E.